IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST) No.15314 OF 2006
Along with
Civil Application Nos.1108 of 2006 and 170 of 2007

Smt.Sushila Parashram Pawar and Anr. Appellants.
Vs
Smt.Neelabai Ramchandra Bhosale
and ors. .. Respondents.

Mr Rupesh Bobade, for the appellants.
Mr V.S.Talkute, for respondent nos 1 and 2.

CORAM : D.B.BHOSALE,J.
DATE : 13.02.2007

PC:

1. Heard the learned counsel for the parties.

2. This second appeal is directed against the concurrent findings of the courts below, by which the suit filed by the respondents-plaintiffs for partition and separate possession of their shares in the suit property, has been decreed. The plaintiffs are the wife and son of deceased-Ramchandra. Ramchandra was the son of defendant nos 1 and 2. Defendant no.1 executed a sale deed in respect of the suit property in favour of the appellants-defendant nos 3 and 4. Both the courts below, after having considered the entire evidence on record, have decreed the suit holding that the sale deed executed by defendant no.1 is not binding on the share

of the plaintiffs. Mr.Bobade, learned counsel for the appellants, submitted that defendant no.2, the mother of Ramchandra, never objected to the sale by defendant no.1 and, therefore, the sale deed is binding on for her share also. He further submitted that even if the sale deed executed by defendant no.1 was without legal necessity, still it binds all the coparceners. In my opinion, both these submissions are devoid of any merits and inconceivable in law. Admittedly, defendant no.2, the mother of Ramchandra, was not a party to the sale deed. She died leaving behind the son of her pre-deceased son, that is, plaintiff no.2. In view thereof, after her death no part of her share would devolve upon defendant no.1, that is, her husband as contemplated under section 15 of the Hindu Succession Act and her share will devolve according to the rules set out in section 16 of the said Act and in the order of succession mentioned in section 15. Perhaps, the sale deed executed by defendant no.1 would bind the share of defendant no.1 only. However, I do not wish to enter into that controversy since the division of the property made by the courts below has not been challenged by the respondents. No substantial question of law insofar as the appellant is concerned, is either raised or involved in the appeal. In my opinion, both the courts below have rightly decreed the suit, which do

not warrant interference by this court in its extremely limited jurisdiction under section 100 of Civil Procedure Code. Hence, the second appeal is dismissed. As a consequence thereof, the civil applications for condonation of delay and for interim stay also stand rejected.

(D.B.BHOSALE,J.)